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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

SUMMARY RECORD OF THE 31st MEETING
(SECOND PART*)

Held at the Palais des Nations, Geneva,
on Tuesday, 27 August 1991, at 6 p.m.

Chairman: Mr. JOINET

later: Mr. HELLER

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* The summary record of the first part of the meeting appears as document E/CN.4/1991/SR.31.

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DISCRIMINATION AGAINST INDIGENOUS PEOPLES (agenda item 15) (continued)

1. Mr. VAN BOVEN said he felt that the Working Group on Indigenous Populations was an important platform for dialogue between the representatives of indigenous peoples, United Nations experts and government representatives. While noting the satisfactory progress made by the Working Group on the draft universal declaration on the rights of indigenous peoples, he would question the use of the word "universal" in the title in view of possible confusion with other major human rights texts. He welcomed the proposal that the Sub-Commission should look into the substance of the declaration once the Working Group had completed its second reading within the next year or two.

2. With regard to the recommendations contained in annex I to the report of the Working Group (E/CN.4/Sub.2/1991/40), he drew attention to paragraph 6 which suggested holding future sessions of the Working Group in other regions. While he was aware of the financial implications, he wished to point out that indigenous peoples came from considerable distances to the United Nations and that the Working Group should do likewise in going to them.

3. He considered it important that the Chairperson/Rapporteur of the Working Group should use her good offices in visiting places where there were problems relating to the rights and interests of indigenous peoples. Ms. Daes' visit to the Yanomami people of Brazil, inter alia, represented a constructive approach which had the support of the Secretary-General of the United Nations.

4. Paragraph 11 of the annex touched on an issue of great importance in recommending that the necessary measures should be taken to integrate indigenous concerns into development activities. Only too often the approach taken was far too compartmentalized. He welcomed the proposal that the recommendation should apply to the policies of the World Bank. Ten years previously the World Bank had published an innovative report on its policies vis-à-vis tribal populations; progress had been made in that area since then, and the extension of the proposal to the development agencies, such as UNDP, would be welcome.

5. He welcomed Ms. Daes' participation in the Preparatory Committee of the United Nations Conference on Environment and Development. It was important to relate the activities of the Working Group to other activities within the larger United Nations framework, and the work of the Preparatory Committee was also relevant to the work of Ms. Ksentini.

6. He had from the beginning supported the study on treaties, agreements and other constructive arrangements between States and indigenous populations, a preliminary report on which had been presented by Mr. Alfonso Martínez (E/CN.4/Sub.2/1991/33). The Special Rapporteur had encountered obstacles but would hopefully be in a position to submit a more substantial report in 1992. He also welcomed the General Assembly's proclamation of 1993 as International Year for the World's Indigenous People. His colleagues had previously thought that new "Years" tended to divert world attention from real human rights issues, but sometimes they actually created momentum and contributed to arousing the awareness which was necessary to enable the work of the United Nations to be carried on.

7. Mr. VERGNE SABOIA said that the wide participation in the Working Group on Indigenous Populations, which included a significant presence of representatives of indigenous populations, had enabled the Working Group to develop as an international forum for the consideration of questions related to the problem of discrimination against indigenous populations and the elaboration of new standards.

8. Given the historical circumstances and the cultural, social and economic conditions under which different indigenous populations had evolved over the years, it might be noted that the patterns of relationships between those populations and the main sectors of the national society varied a great deal. Those differences must be given due weight in the drafting of the universal declaration on the rights of indigenous peoples, which needed to seek a delicate balance so as to ensure indigenous populations adequate protection against discrimination and undue interference in their will to preserve and maintain their cultural heritage and ways of living. Sufficient flexibility should be allowed so as to avoid isolationist attitudes which would tend to prevent the development of mutually beneficial relations between members of distinct ethnic groups.

9. Referring to the working paper by Ms. Daes on the ownership and control of the cultural property of indigenous peoples (E/CN.4/Sub.2/1991/34), he said that her approach merited approval in that she had drawn the appropriate distinctions between situations involving ownership and possession of indigenous cultural objects according to whether institutions or individuals had acquired them by legitimate means and whether the aims they pursued were compatible with the preservation and better appreciation of the cultural and artistic richness of the societies from which they originated. He noted with satisfaction that due care was being taken by the Rapporteur to work in close collaboration with intergovernmental and non-governmental organizations active in the same field.

10. Referring to Ms. Daes' visit to Brazil, he said that the success of the trip had been largely due to her extraordinary energy and her willingness to put up with difficult living and working conditions. He was glad to learn that Ms. Daes had been able to gain direct firsthand knowledge regarding the problems affecting the Yanomami people. Her visit had reinforced contacts between the Brazilian Government and the United Nations and specialized agencies with a view to increased cooperation and assistance from those agencies, especially in the field of health care. After Ms. Daes' visit, however, the Government of Brazil had had to redouble its efforts to evict gold-miners who had again illegally settled in the area, bringing in a new wave of malaria. Police and helicopters were being used to evacuate the area, destroy the clandestine air strips and ensure much-needed health assistance. Progress was also being made towards taking the necessary legal measures to demarcate the Yanomami land - an indispensable step to protect that fragile society from the threat of harmful outside interference.

11. Mrs. WARZAZI said that the array of documents submitted under agenda item 15 showed the usefulness of non-governmental organizations dealing with the problems of indigenous peoples in alerting the members of the Sub-Commission to the question.

12. The study by Mr. Alfonso Martínez on treaties, agreements and other constructive arrangements between States and indigenous populations would be a very important contribution to awareness of the legitimate rights of such populations. It would need time and material means which the Sub-Commission should assess so as to be able to make recommendations to the Centre for Human Rights for providing the Special Rapporteur with the assistance he required.

13. The working paper by Ms. Daes on the ownership and control of the cultural property of indigenous peoples proposed to study the essential aspects of the restoration of that property to those who had a right to it and the protection and conservation of property in the hands of indigenous peoples, with an analysis of the steps already taken and those still needed, once a list had been established of what the indigenous peoples understood by "cultural property".

14. She had been very encouraged by the number of participants in the ninth session of the Working Group on Indigenous Populations. The Working Group should be congratulated on the progress made on the draft universal declaration, which must reflect the aspirations of all indigenous peoples, while at the same time providing for Government interests in order to ensure results. The draft declaration could usefully include many concerns such as self-determination, the protection of cultural identity and the protection of the environment, and should be completed before the start of the International Year for the World's Indigenous People in 1993.

15. It was a matter of concern that statements made during the meetings of the Working Group reflected the poor health conditions of the indigenous populations, the deterioration in their economic circumstances, high unemployment and poverty. However, it emerged from the reports submitted that Governments were increasingly aware of the needs and aspirations of indigenous peoples. She supported the recommendations relating to wider dissemination of the work of the Working Group and that concerning the holding of meetings of the Working Group in Asia and Latin America so that it could be nearer to the indigenous populations. She hoped that the Sub-Commission would be able to use its good offices in conflicts which might arise between indigenous nations either vis-à-vis those nations themselves or vis-à-vis their authorities.

16. She firmly supported the Working Group's position that it was important to continue to distinguish between indigenous peoples and minorities.

17. Mr. EIDE, referring to Mr. Hatano's comment that there should be a definition of indigenous peoples, said that it was a difficult question because the field was constantly evolving; when the 1957 International Labour Organisation Convention had been considered for ratification, Norway's position had been that it had no indigenous population and that the Convention was irrelevant. According to the current Constitution, however, an indigenous race did exist in Norway; a similar change had occurred in the position of many other countries. Likewise, there had been developments in Latin America since the time of the adoption of the Universal Declaration of Human Rights in 1948, when the prevailing attitude had been that no minorities existed; that was no longer the case. The issue of a precise definition therefore required further discussion and a flexible approach.

18. The Working Group was to be congratulated on allowing broad participation by the representatives of indigenous peoples, thus encouraging them to move into the international network. Participation by Government observers had also grown and helped promote in-depth dialogue on existing problems. The better Governments were represented, the easier it was to find solutions at a later stage.

19. Referring to the forthcoming conference in Moscow on the human dimension, he said that in view of the number of indigenous peoples in the Soviet Union, it was important that Ms. Daes should be part of the United Nations presence at that conference.

20. Ms. KSENTINI welcomed the Working Group's recommendation that the General Assembly should designate a United Nations coordinator for the International Year for the World's Indigenous People, who might be the Under-Secretary-General for Human Rights. Such coordination could contribute to the efficiency of the Year. In his preliminary report on treaties, agreements and other constructive arrangements between States and indigenous populations, Mr. Alfonso Martinez had provided a good account of the legal background to the resolutions studied. She shared his conviction that the technical and legal nature of the report should not preclude account being taken of historical and anthropological considerations. The study should moreover not be restricted to a specific geographical framework; it should be future-oriented while bearing historical problems in mind, and it should pay special attention to domestic and international machinery for the settlement of conflicts. The study was a complex undertaking and would make a very important contribution to the recognition of the rights of indigenous peoples and, hopefully, to the elaboration of standards for their protection. She hoped that the Special Rapporteur would be granted the assistance that he needed.

21. Mr. Heller took the Chair.

22. Mr. LYONS (Indian Law Resource Centre) said that the Haudenosaunee delegation which he represented had attended the first meeting of indigenous people and nations in Geneva in 1977, hosted by the international non-governmental organizations; it was their hopes at that time which were embodied in the draft universal declaration on the rights of indigenous peoples.

23. His delegation was glad to see the Working Group proceeding with its mandate on evolution of standards but warned that the review of developments should not be overshadowed by the drafting process. That process needed to be fuelled with current information supplied directly to the Working Group by indigenous nations and people and the impact of the declaration must be continually reviewed by the Working Group after its adoption. It was imperative for the continued protection of the human rights of indigenous peoples that the Working Group's existence after the adoption of the declaration should be guaranteed.

24. The commemoration of the five-hundredth anniversary of the landfall of Christopher Columbus in the native lands of the Western Hemisphere offered an opportunity to pay homage to the indigenous nations which had disappeared from

the face of the earth, victims of the development of Western civilization. However, it also offered an opportunity to look to the future, to learn from the past and to design the instruments that would ensure human rights and peace for the generations to come.

25. According to the law of his people, men had responsibility and what they called "rights" were responsibilities. Universal laws governed the great cycles of life upon earth; those laws were beyond the jurisdiction of mankind and demanded absolute fidelity; if they were broken and the order challenged, men would fail as mortals; they were not sufficient unto themselves.

26. The question of human rights for indigenous people was an ethical issue; those who held economic, technical and military power should be leaders in moral values as well. Human rights could not be separated from freedom, health and spiritual well-being. The question was whether men had the common sense to understand that and whether they had the moral fortitude to act upon that knowledge. Men must regain the values of the past - respect for life, compassion, generosity and responsibility for one another and the natural world. Their immortality lay in their adherence to the great regenerative laws of the universe in which the rights of human beings were inherent. In a spirit of cooperation he hoped that common ground could be found for the survival of human beings and the natural world life that they depended upon.

27. Mr. BARSH (Four Directions Council) said that the open and informal working methods adopted by the Working Group had made it possible for indigenous participants to contribute extensively to the drafting of the universal declaration on the rights of indigenous peoples. The text was basically acceptable to his delegation, with the clarification that the formula to describe the right to self-determination in the context of indigenous peoples created a risk of implying that indigenous peoples did not have the same rights as other peoples. In the view of his delegation the proposed text of article 1 should be interpreted as encouraging, but not requiring, in every case, that indigenous peoples should realize their goals within the constitutional framework of the States in which they currently lived. The draft declaration differed from United Nations instruments on decolonization by stressing constitutional accommodation rather than complete national independence, as was consistent with the realities of most indigenous peoples. The United Nations Centre on Transnational Corporations had presented the first of a series of annual reports on the impact of its activities on indigenous lands and resources (E/CN.4/Sub.2/1991/49), with concrete data on the indigenous peoples of the Americas, their numbers and distribution, and specific illustrations of both good and bad experiences with development projects. The report's conclusion was that the critical difference in transnational corporation performance appeared to be the legal status of indigenous lands rather than corporate policy or corporate culture. It was important that the database should continue to expand, with the greatest possible involvement of indigenous peoples themselves.

28. In 1990 the Sub-Commission had asked the Secretary-General to initiate discussions with United Nations operational bodies with a view to ensuring that indigenous peoples were beneficiaries and not victims of projects funded by the United Nations. While little had been done in that respect, the ILO had launched a series of inter-agency technical meetings to promote a

coordinated approach to indigenous rights in the delivery of United Nations project aid. His delegation believed that a more informal inter-agency mechanism could provide immediate benefits for indigenous communities and urged the Sub-Commission to submit that proposal to the Commission and to the Economic and Social Council so as to guarantee that the huge sums constituting development aid had the greatest possible impact on indigenous peoples.

29. The proclamation of the International Year for the World's Indigenous People was one of the most important developments of the past decade. It had been conceived of as an experiment in providing international support and assistance directly to indigenous peoples to deal with their own concerns and needs. If the Year enjoyed adequate government, political and financial support, he believed that it would demonstrate the benefit of giving indigenous peoples greater control over their own development. Two crucial decisions on the Year remained to be taken by the General Assembly; the first was the recommendation that the Year should have a full-time United Nations coordinator in New York with influence over the United Nations operational agencies, which the Centre for Human Rights lacked. Both the Centre and the ILO should be included in planning, however, because of their role in standard-setting and review. His delegation envisaged a triangle, with the coordinator in the Department of International Economic Cooperation working in conjunction with focal points in the Centre and the ILO in Geneva, and with indigenous peoples.

30. Indigenous peoples themselves must be at the centre of the planning process. The Four Directions Council had suggested that all United Nations operational bodies should convene technical meetings with representatives of indigenous organizations in 1992 to prepare detailed lists of community-level projects in different countries and sectors which United Nations bodies could assist and indigenous peoples could execute. It had also proposed the recruitment of indigenous people by the United Nations for the work to be done system-wide, such as the design of promotional material.

31. UNESCO's current programme for the protection of cultural property was designed for disputes between States, and indigenous peoples had no practical means of access to it. His delegation saw a role for the Working Group as an advocate for the interests of indigenous peoples - not for the return of cultural property duplicating UNESCO's work, but for the preparation of studies and recommendations directed at improving the work of United Nations bodies wherever it affected indigenous peoples. In particular, his delegation saw its role as a model for indigenous participation.

32. His delegation was disappointed that the progress report on the study of treaties (E/CN.4/Sub.2/1991/33) was non-substantive and expected that the next report would address the general questions of international law brought to the attention of the Special Rapporteur in the Working Group. His organization would be working with other indigenous non-governmental organizations to convene a conference of indigenous experts on treaties in 1992 for the benefit of the Special Rapporteur. It was convinced that most of the information needed by him had already been assembled by indigenous peoples and what was required was an appropriate mechanism for collating it for the Special Rapporteur's analysis and conclusions.

33. Ms. BURER (Pax Christi International) said that the Yanomami Indians of Brazil and Venezuela continued to be in a desperate situation; gold prospectors were again invading their territory. There were too many obstacles, such as the lack of financial resources and means of transport, to the work of the National Health Foundation and malaria and tuberculosis continued to kill the Yanomami. That confirmed the conclusions of Brazilian experts that only the creation of a reserve of 94,000 km^2 would prevent the annihilation of the Yanomami people. They could not be concentrated on a smaller territory since that would raise other problems such as the lack of adequate resources for their subsistence. It would not be any more realistic to create agricultural settlement projects for the gold prospectors near Yanomami territory, since that would merely encourage its constant reinvasion.

34. Positive measures had already resulted from the concern voiced by the Secretary-General of the United Nations and Ms. Daes. One development had been the appointment of a new Chairman of the National Indian Foundation and his endorsement of the Yanomami reserve project, which only lacked the signature of the President of the Republic.

35. Her organization very much hoped that the Sub-Commission would support the Brazilian Government in the creation of a Yanomami reserve of 94,000 km^2 and recommend to it that gold prospectors should be relocated in territories far away from those of the Yanomami, and that it would request the Secretary-General to continue to assist the Brazilian Government in the areas of health and the demarcation and control of the Yanomami reserve.

36. The situation of the Innus of Canada gave rise to continuing concern as a result of the disastrous consequences on their living conditions of low-level military flights. The report of a mission of inquiry sent by her organization would be transmitted shortly to Ms. Daes.

37. Among difficult situations faced by indigenous peoples, she made particular mention of the tribal population of Chittagong Hill Tracts in Bangladesh, where coordinated United Nations action had become urgent in view of persistent allegations of genocide. In India, tribal populations risked being driven out by the Narmada Valley hydroelectric project financed by the World Bank, while in Indonesia, vast deforestation projects were threatening the environment, jeopardizing the existence of many tribes and causing large-scale population exoduses.

38. Mr. ARAUJO (Liberation) said that the principle of self-determination was fundamental for his people, the Mocovi, who had been subject for more than 100 years to the imposition of a colonial system by the Argentine State which had undermined its traditional political institutions, promoted social disintegration and left the people without their traditional territory and the resources needed for their survival. The Mocovi people aspired to the reintegration of their territory on the basis of existing treaties with the political institutions of Argentina.

39. In his delegation's opinion, the Working Group should give thorough consideration to the question of the promotion of the economic and development systems of indigenous peoples, including the issue of the integrated management

of indigenous territories and the protection of the environment. Indigenous peoples had the know-how and technology to manage their natural resources satisfactorily; the intellectual ownership of that knowledge in the hands of the indigenous peoples should be recognized since in the long term it would lead to sustainable development.

40. Another issue was that of the apartheid and racial discrimination which some States applied to indigenous peoples on a legalized basis. In some South American countries apartheid had become institutionalized at a time when in other parts of the world the practice was being brought to an end. In Argentina, the Government of the Province of Misiones, in Act No. 2727, had set up a system of "communities", each of which was directly controlled by the State. In practice, each community had become a ghetto where the Government of Misiones controlled the internal life of the Guarani in all its aspects. Under the protection of Act No. 2727, it had burned down indigenous communities, destroyed their food reserves and forcibly resettled their inhabitants. It was for similar reasons that a number of indigenous peoples were working towards a genuine process of decolonization promoted by the United Nations.

41. Ms. SMITH (International Organization for the Elimination of All Forms of Racial Discrimination), speaking on behalf of the Dineh (Navajo) people of Arizona, raised the problem of forced relocation and asked the members of the Sub-Commission to give consideration to that issue. In former times her people had been self-governing and self-sufficient and had lived in harmony. Since then, the Navajo had become refugees and experienced discrimination, psychological stress and cultural genocide. She requested the Sub-Commission to ask the United States Government to place a moratorium on livestock impoundment, fencing and the destruction of sacred sites and to halt all relocation. The State Department had shown no compassion or regret for nations which wanted to live in peace. If the United States Government were to give the lands to another tribe, her delegation requested that the Sub-Commission should provide technical assistance to both tribal governments.

42. Mr. LYONS (International Organization for the Elimination of All Forms of Racial Discrimination), speaking on behalf of the Western Shoshone Nation to illustrate the need for the Sub-Commission to continue to support the study of treaties, agreements and other constructive arrangements between States and indigenous peoples, raised the issue of the 1863 Agreement between the United States and the Western Shoshone Nation known as the Treaty of Ruby Valley, recognizing the title of the Western Shoshone to their ancestral lands. Unilateral action taken by the United States Bureau of Land Management had effectively abrogated the treaty. The land had been used for gold-mining, nuclear testing, water exploration and military land grants.

43. He wished to draw the attention of the Sub-Commission to the need for a fair hearing for indigenous nations and peoples whose treaties had been unilaterally abrogated by a nation State. International laws and perspectives were important in those situations because they ensured that contemporary arguments reflected the tenor and reality of the time the instrument was signed. Indigenous nations and people were continually at the mercy of hostile local and sometimes federal courts which refused to acknowledge the validity of a treaty made in good faith by both parties at the time.

The Western Shoshone had refused money for the land since land was more important to their future generations than money and without it they would lose their culture. He asked the Sub-Commission to support the study of treaties with indigenous peoples to ensure that they enjoyed the same human rights as other peoples and that events like that recounted, which struck at the heart of nations, would become relics of the past.

44. Mr. GRAVES (World Conference on Religion and Peace) said that the difficulties encountered in determining the correct wording for operative paragraph 1 of the draft declaration on indigenous rights illustrated the importance of self-determination and the need to make it clear to States and international opinion what the aims and objectives of indigenous peoples were. The question of self-determination must be seen in relation to its cultural and religious pre-suppositions. Indigenous peoples, as the first occupants of any territory, created social structures based not on modern concepts but on their close association with the land and its resources, as the natural environment in which their society grew and developed. Questions of permanent land ownership only became important with the advent of other peoples whose concepts were foreign to the indigenous structures. Those concepts were often imposed upon the indigenous peoples by force and had given rise to resistance and conflicts, even in recent times.

45. The draft declaration might bring before the international community all the relevant issues regarding long-standing misunderstandings between indigenous peoples and more recently settled populations. It was evident that the lands controlled by indigenous peoples had dwindled over the centuries and that the implications for them of the concept of self-determination might lead to conflicts about control of more extensive tracts of land. The religious and cultural basis of the claim for self-determination often went back to ostensibly archaic views of the world and nature which, however, were proving close to modern ecological thinking - preservation of the natural and spiritual roots of human existence. What indigenous peoples were fighting for was a basic minimum of social, political and economic infrastructure for the proper expression of their spiritual and cultural ambition. It seemed unlikely that those objectives could be furthered without a viable and protected economic, social and political basis; it was hoped that that was what the draft declaration would provide, and that within the Sub-Commission all parties would show the necessary readiness to change and seek new solutions.

46. Mr. CALI (International Indian Treaty Council) said that, while there had been definite progress in the formulation of international positive law with regard to indigenous peoples, the situation continued to deteriorate with the appropriation and misuse of their lands and sacred sites, the breakdown of their communities and the enforced participation of indigenous peoples in repressive paramilitary activities. In recent years, elections in Latin America had resulted in civil Governments but they had not solved the immediate problems, and those elected had forgotten their electoral pledges.

47. He found it paradoxical that in some countries of the Americas whose Governments admitted to serious problems of health, education or land but claimed to have no money to deal with them, preparations were being made to celebrate the centenary of the conquest and domination of the continent. The indigenous peoples felt that those celebrations were an affront to their dignity and yet another negation of their history and existence.

48. It was thanks to the United Nations Voluntary Fund for Indigenous Populations and the efforts of organizations and communities that the high level of attendance of representatives of indigenous peoples who had made important contributions to the discussion of the draft declaration on indigenous rights had been ensured. Government observers had also contributed to the discussions, from their point of view; it was a welcome fact that a situation of frank dialogue was emerging in that respect.

49. His organization proposed that at its next session the Sub-Commission should have before it a consolidated first version of the draft declaration, prepared in advance in the working languages of the Working Group, in which the legal source of each article would be indicated. The draft declaration complied with the mandate contained in Sub-Commission resolution 2 (XXXIV) and included substantial aspects of indigenous legal systems. Once adopted by the General Assembly, it should be a source of inspiration for national legislation, but there was a need to progress towards a legally binding instrument provided with a monitoring body to guarantee the enjoyment and exercise of the rights established in it.

50. Sub-Commission resolution 1990/26 requested the Secretary-General to prepare a note on the financial implications of convening one or more of the future meetings of the Working Group outside Geneva. His organization suggested that the tenth session should be held on the American continent at the invitation of indigenous organizations and the Government concerned.

51. In the light of Ms. Daes' working paper on the ownership and control of the cultural property of indigenous peoples, his organization was of the opinion that the Sub-Commission should undertake a study, in collaboration with indigenous organizations, non-governmental organizations, WIPO and UNESCO, to resolve the many problems which offended the dignity of indigenous peoples. Sacred and ceremonial objects belonging to indigenous peoples, currently to be found in museums around the world, should be returned to those peoples.

52. Referring to the preliminary report prepared by Mr. Alfonso Martínez, he said that his organization agreed with the structure of the study proposed by the Special Rapporteur in his preliminary conclusions and recommendations, but suspected that the study had to some extent been hindered by irrelevant considerations and prejudices.

53. His organization also suggested that as part of the activities of the International Year for the World's Indigenous People, the Universal Declaration of Human Rights should be translated into indigenous languages and that a short information document should be prepared on the activities of the Working Group.

54. Mr. Joinet resumed the Chair.

55. Mr. HELLER said that the draft declaration on indigenous rights must be viable and realistic but that its basic objective - to retain an awareness of the past but to restate a new type of relationship for the future - should be kept in mind. He agreed with many of the recommendations made by Ms. Daes, but in respect of relations with other United Nations bodies or specialized agencies it was important not to take initiatives in isolation; a better-defined system of cooperation was required. It was also important to ask

Governments to report on any initiatives relating to indigenous peoples which they took outside the United Nations framework - for example, the seminar on American Indians held in Mexico several months previously.

56. Referring to the preliminary report of Mr. Alfonso Martínez concerning the study on treaties, he said it should be borne in mind that the study was a monumental task. Given the complexity of the topic, he would suggest a more dynamic approach, taking into consideration constitutional amendments made by a number of Governments. Issues concerning indigenous people tended to be regarded as essentially conflictual; it was necessary to avoid confrontation and to realize that another type of relationship with Governments was at stake.

57. Mr. TREAT commended Mr. van Boven's comments and said it was important that the Working Group should go to the areas of residence of indigenous peoples whenever possible, even if there were financial implications. They went to great expense to come to Geneva and the Working Group should also go to them in order to have a proper perspective of the problems in situ. The question of indigenous peoples was a particular speciality of the Sub-Commission; Ms. Daes would be recognized for many years to come as a world authority on the subject and her commitment and dedication would be remembered. The subject was geographically and intellectually vast and Ms. Daes should therefore endeavour to coordinate her efforts with those made by others active in the field and avoid overlapping. Lastly, he complimented Mr. Alfonso Martínez on his willingness to undertake the enormous task involved in the study on treaties.

58. Ms. WINTOUR (International Confederation of Free Trade Unions) said that, although her organization represented more than 100 million workers in 103 countries throughout the world, only a small proportion of its membership were rural workers and an even smaller proportion came from indigenous populations. An area of specific concern for ICFTU involved the rights of members of the indigenous communities as workers and as self-employed farmers.

59. ICFTU wished to draw the Sub-Commission's attention to the situation in Guatemala and Colombia, where democratic and participatory indigenous organizations had sought to improve their working and living conditions. In Guatemala, two thirds of the population of 10 million were from indigenous communities but had no access to their basic means of livelihood and cultural identity - farm land. Seventy per cent of the country's arable land was controlled by 2.2 per cent of landowners and particularly in the highlands, populated by indigenous communities, the small plots of land were insufficient to meet basic nutritional requirements while ecological problems caused by soil exhaustion and erosion were on the increase. Entire families were forced to migrate to the coastal area as seasonal workers on the coffee, sugar and cotton plantations.

60. Indigenous communities had been one of the sectors of society which had suffered from persistent and continuing violations of fundamental human rights in Guatemala. Indigenous communities in the highlands had been forced to participate in civil defence patrols, which constituted a violation of the right to freedom of association and freedom of movement guaranteed by the Guatemalan Constitution; those who refused had been threatened with death.

61. At its forty-second session, the Sub-Commission in resolution 1990/27 had expressed its concern for the need to ensure sustainable development and, in particular, to conserve renewable resources and recognize the special role of indigenous communities as users and administrators of those resources. It was ICFTU's concern to ensure that representative organizations of indigenous communities effectively participated in the planning and implementation of development and environmental projects.

62. In Colombia, the new Constitution recognized some rights of the indigenous communities of that country. However, government development plans had consistently overlooked the rights of those living in the area concerned. For example, the representative institutions of the 35,000 indigenous inhabitants of the region had had no part in drawing up the Pacific Coast Integrated Development Plan; they considered that it would have negative consequences on the local habitat, that it did not take into account the conservation of natural renewable resources and that it failed to respect the rights and traditions of the indigenous communities. It was the indigenous leaders that were members of organizations seeking to defend their rights who had been the targets of repressive measures. In 1990, there had been 37 cases of extrajudicial assassination and disappearance of indigenous leaders.

63. In the opinion of ICFTU, the rights of indigenous peoples, as embodied in several international instruments, were not respected in many countries, while in both Guatemala and Colombia there were examples of their persistent violation. ICFTU therefore called on the Sub-Commission to take effective action to promote the participation of representative indigenous organizations at all levels of decision-making and to defend the rights of the indigenous communities in those countries in particular.

64. Mr. EYA-NCHAMA (International Movement for Fraternal Union among Races and Peoples) said that he wished to draw the Sub-Commission's particular attention to the thorny problem of the interpretation by both sides of an agreement or treaty between them in a colonizer-colonized context. He cited the specific example of the Treaty of Uccialli of 2 May 1889 between the Government of Ethiopia and the Government of Italy, in which, in the translation from Amharic to Italian, the change of a single verb laid an obligation on the Emperor of Ethiopia to resort to the services of the King of Italy in his relations with other foreign powers instead of merely being empowered to do so. The two Contracting Parties had therefore had conflicting interpretations of the treaty in question.

65. At a time when old concepts of the nation State were disappearing, the international community should be working to invent a new concept of the State in which all parties would be involved in both public and private affairs, particularly in the economic and social relations between indigenous peoples and the other inhabitants of their State. Indigenous people were just as much human beings; their rights too should be protected and promoted, and their ideas on religion, development, education and the life cycle respected.

66. Mr. BALIAN (Human Rights Advocates), speaking on behalf of Mr. Mutang Urud, representing 12 indigenous peoples of Asia, said that the occupation of their territories by military forces and paramilitary units was a constant danger to their daily life. The activities of mining companies

increased the degradation of the environment, while government and private enterprises were selling their lands; the revenues went to the oppressors and the damage remained for the indigenous peoples. Many people had been deprived of their land and had had to find refuge in other areas, creating further tensions. Many members of indigenous and tribal peoples had become displaced persons in their own land.

67. In endorsing paragraph 6 of the recommendations contained in the report of the Working Group (E/CN.4/Sub.2/1991/40, annex I) he suggested that a session of the Working Group in Asia would greatly facilitate the constructive participation of the indigenous peoples of the region in drafting the declaration on the rights of indigenous peoples. Asia was the home of large numbers of indigenous peoples and that fact and the serious nature of their problems meant that their participation in the work of the Working Group was crucial.

68. Mr. PATTEN (National Aboriginal and Islander Legal Services Secretariat) said that the Australian Royal Commission report into Aboriginal deaths in custody had been a bitter disappointment to Aboriginal people in Australia. Their requests for economic justice and an Aboriginal ombudsman had been ignored. The Royal Commission had made 339 specific recommendations concerning adjustments to the system of incarcerating Aboriginal people, but the vast majority of those recommendations referred responsibility back to the Australian State Government which had been responsible for stripping the Aboriginal people of their rights in the first place. The Australian Government's main response to the Royal Commission report had been to create a Council for Aboriginal Reconciliation, ostensibly to stimulate education and public awareness in Australia about Aboriginal history, culture, dispossession and continuing disadvantage. There was nothing in the Australian Government's new reconciliation plan about implementation of land rights, compensation, cultural and language rights or constitutional recognition of Australian Aboriginal people - measures all desperately needed to reverse the tide of discrimination, ill-health, cultural dislocation and sheer poverty which oppressed them. The Council for Aboriginal Reconciliation would have no real power; it would comply with ministerial directives as to the exercise of its powers, which were restricted to holding inquiries and organizing conferences. It was required to use a government-created, unrepresentative body as the principal means of facilitating consultation with Aborigines and Torres Strait islanders. The promise of a treaty between white and black Australia had been withdrawn, apparently to await the outcome of the reconciliation process. Meanwhile, the Aboriginal people continued to struggle with the problems of death in custody and the increasing number of Aboriginal prisoners.

69. The Australian Government refused to acknowledge its responsibility for the appalling health and social problems of the Aborigines. The Commonwealth Government had argued that, not withstanding its having signed the International Covenant on Economic, Social and Cultural Rights, it had no domestic health obligations towards Aboriginal people because the Covenant had not been implemented by domestic legislation.

70. The Aboriginal people of Australia were beset by direct discrimination or the effects of past discrimination, or institutionalized racism, as could be seen from examples concerning the relations between State Governments and

Aboriginals and between the police and the Aboriginal people. In their poverty and lacking authentic indigenous structures for regaining control over their lives and community, the Aboriginals were dependent on the Australian Government for the structural increase whereby they could reorganize their communities on the basis of strategies for health, education and employment. A crucial need was for compensation funds to assist in rebuilding their communities and land rights. Instead of that, they were given reconciliation programmes and responsibility for their welfare was increasingly placed on provincial State governments whose basic opposition to Aboriginal welfare was rooted in 200 years of history.

71. Mr. Heller took the Chair.

72. Mr. OYARCE (Observer for Chile), referring to the report of the Working Group, said that perhaps its most relevant aspect was the identification in paragraph 4 of annex I of constructive dialogue as a characteristic to be stressed in generating understanding and developing the confidence that was indispensable to arrive at a balanced consensus. Another aspect was the need to seek an approach with a historical perspective going beyond all social and political projections. A third element, contained in paragraph 8 of annex I, was the emphasis on the need for peaceful resolution of conflicts. His delegation considered legal principles and the establishment of an open and public dialogue between all parties to be of particular relevance in that regard. The good offices of the Sub-Commission were also an option which merited reflection. A fourth consideration, set out in paragraph 11, related to technical cooperation and developmental assistance. His delegation considered it essential to find options which would conserve multicultural coexistence and diversity in cohabitation. It was essential to construct bases for dialogue and understanding which would enable the multicultural aspect to be maintained, by ensuring compliance with basic principles which international positive and customary law accepted as being inherent in the nation State. If realism were lost, the Declaration and the efforts of the United Nations would be called in question. The most valuable aspect of the Working Group's report was its realism and its tendency to seek solutions with prospects for the future.

73. Mr. BARKER (Observer for Australia) said that it was important for Governments and non-governmental organizations, particularly those representing indigenous peoples, to participate actively in the Working Group. As in other areas, his delegation believed that a scrutiny of the situations of particular countries contributed to the promotion and protection of human rights.

74. Referring to the report of the Working Group, he said that his delegation would prefer future reports to be prepared in such a way as to make them more useful to participants as a means of promoting the rights of indigenous peoples. The report should identify the various observers, Governments and non-governmental organizations that had made statements; its failure to do so meant that it was often a puzzle to the reader.

75. His delegation supported the Working Group's recommendation that it should conclude a first reading of the text of the draft declaration on indigenous rights at its tenth session. It also hoped that the second reading could be completed by 1992 so that the draft as a whole could be submitted to

the Commission on Human Rights at its forty-ninth session, and would support the holding of another extended session in 1992 if similar substantial progress could be expected.

76. Some participants were concerned that, once the draft declaration moved out of the Working Group, indigenous people might no longer be able to make any substantive input to its preparation. His delegation considered that ways could be identified of maintaining that input, for example by scheduling any future consideration of the draft by a working group immediately prior to sessions of the Working Group on Indigenous Populations.

77. In a statement to the Working Group, the Australian Minister for Aboriginal Affairs had described in detail the Australian Government's efforts to redress the disadvantages faced by Aboriginals and Torres Strait islanders. An important element in the Government's approach had been the process of reconciliation, a decade-long programme of reform and social justice to provide the framework for achieving justice and proper recognition for Australia's indigenous peoples. The Australian Senate had endorsed the legislation for that programme.

78. The return of cultural property was an important matter for indigenous peoples and was an important human rights issue when it involved skeletal remains. His delegation would give further consideration as to whether an expanded study would be a useful means of promoting progress in that area.

79. He noted that the study on treaties and the International Year for the World's Indigenous People were of considerable importance to Australia. He stressed Australia's commitment to the work of the Working Group. With regard to the indigenous people of Australia, the Australian Government admitted the injustices of the past and the inequalities of the present. Its policies to rectify those problems were based on the concept of reconciliation with the Aboriginal people and the principle of self-determination.

80. Mr. APUNTE FRANCO (Observer for Ecuador), referring to the report entitled "Transnational investments and operations on the lands of indigenous peoples" (E/CN.4/Sub.2/1991/49), submitted by the United Nations Centre on Transnational Corporations, said that in the opinion of his delegation the document failed to give an overall view of the development of oil prospecting in developing countries. The report recognized the vital importance of oil exports for the economy of Ecuador, where they represented 40 per cent of the national budget and served as a basis for paying off a large part of the external debt; however, Ecuador's oil policy infringed the rights of the indigenous peoples living on the territories where oil had been found.

81. Ecuador's policy was to encourage appropriate environmental management in order to prevent a deterioration of ecosystems and promote sustainable development. It had declared the 1990s Ecological Development Decade; all development plans, prior to implementation, had to be certified as ecologically sound. The Government had also attempted to reconcile its own interests with those of the indigenous peoples living on oil-producing territories by ensuring that oil inspection observed appropriate technical standards so as to minimize ecological damage and protect the rights of the indigenous peoples.

82. The document had lost sight of the idea that one of the basic strategies for achieving sustainable development was to tackle critical poverty by dealing with the various structural factors which determined its existence, such as policies which contributed to the impoverishment of the population and also resulted in environmental deterioration, responsibility for which could be attributed to the patterns of consumption of developed societies and the existence of an unjust international economic order.

83. His Government wished to place on record that it had set up appropriate machinery for harmonizing the vital needs of national development with the interests of all social groups. In addition to its domestic activity in that regard, Ecuador had played an active role in the international and regional context. As part of the Amazon treaty coope ation, it had contributed to the creation of commissions on the environment and indigenous affairs.

84. Mr. ALFONSO MARTINEZ said that the discussion of his preliminary report on treaties, agreements and other constructive arrangements between States and indigenous populations (E/CN.4/Sub.2/1991/33) had led to conclusions as to the importance of the study itself, the vastness and complexity of the topics to be covered and the need to complete it as soon as possible, for which purpose appropriate resources would be required. The support and encouragement of the non-governmental organizations was of particular importance in terms of their invaluable contribution to future work, beginning with the contribution of organizations representing indigenous peoples in the form of the information supplied in their answers to the questionnaire sent to them. The questionnaire would be distributed again in 1992 and they would be urged to submit information.

85. With regard to Mr. van Boven's comments, the next report on the progress of work in 1992 would address issues of greater substance.

86. Mr. Heller had criticized the emphasis placed on the conflictional aspect of relations between indigenous peoples and States. The next report might underline the positive aspects of constitutional provisions and their effects on daily life.

87. The delegation of Australia had been encouraging in considering that the completion of the study could help the Australian Government to place its relations with the Aborigines on a sounder footing, and that the Special Rapporteur's conclusions might play a positive role in those relations.

88. He noted that the Four Directions Council had registered disappointment with the report; however, the study was in an early stage and it was impossible to have made more progress. He had considered it his duty to inform the Sub-Commission of the state of the work, the difficulties encountered and the approach envisaged for the future.

89. He welcomed the possibility of convening a conference of indigenous experts from non-governmental organizations in 1992. While it was easy to obtain the opinions of non-indigenous anthropologists, sociologists and lawyers concerning indigenous peoples, it was important to seek the opinions of the latter directly. If the conference served that purpose, he would be prepared to take part. The Four Directions Council had suggested that most of

the information which he might require had already been collected by the indigenous peoples themselves. While that might be the case, such information had not been transmitted to him; that had been the purpose of the questionnaires sent to the various indigenous organizations. Their replies would constitute an important contribution to the study.

90. There were various methods of undermining the work of the Working Group on Indigenous Populations - by direct attack, by deprivation of resources or by having the Working Group exceed its competence. There was a real danger that the Working Group's efficiency would be impaired by thus going beyond its mandate and he would not support the various initiatives which had arisen in that context.

91. Ms. DAES (Chairperson/Rapporteur of the Working Group on Indigenous Populations) said that Mr. Hatano had raised the problem of the definition of the concept of indigenous peoples. Her own position after many years of dealing with the subject was clear, but the Working Group undoubtedly had to find a definition of "indigenous" and the indigenous peoples themselves must contribute to elucidating the criteria and requirements which made a person indigenous. A working definition already existed in the monumental study by Mr. Martínez Cobo; that must suffice for the moment. If a definition had to be adopted before the draft declaration came into being it might suffer the same fate as the draft declaration on minorities. She would be the last person to accept that the draft declaration would have to include a definition of the concept of indigenous peoples.

92. Another problem was the principle of self-determination. The Working Group had already done sufficient work on that concept and, again, many difficulties had been encountered. Its experts had drafted a provisional definition and temporarily included it in the draft declaration. Since that provision had been criticized by many participants and the matter needed reconsideration, she expected comments by all concerned, especially government observers and representatives of indigenous peoples. There had been some suggestion that the wording of article 1 common to the two International Covenants on Human Rights should be adopted. If she continued in her present post she would take that proposal into account, along with replies from Governments, indigenous peoples and non-governmental organizations, in preparing a new draft provision. It might be noted that indigenous peoples, when referring to self-determination, meant being in a position to govern themselves and were principally concerned with internal self-determination. Governments should take into consideration the fact that the indigenous organizations had never suggested separatism or anything similar.

93. Mr. van Boven had remarked that the word "universal" in the title of the draft declaration was inappropriate. She herself had repeatedly said that confusion with the Universal Declaration on Human Rights must be avoided. The matter would be discussed in the Working Group and the word would possibly be omitted.

94. She agreed that it was essential not to confuse the concepts of indigenous peoples and minorities; the original inhabitants of a country were not to be classified as minorities even though their numbers were small.

95. There was a need to appoint a coordinator for the International Year for the World's Indigenous People. The relevant resolution had been drafted and included a provision bringing the matter to the attention of the General Assembly, which would take a decision. It was possible that the Under-Secretary-General for Human Rights might be appointed to that position and that a member of the indigenous peoples might be named as his assistant.

96. She thanked various members of the Working Group for their support and contributions to the work of that body. Efforts had been made to avoid overlapping of work. She would continue to take into consideration all views and comments put forward in the Working Group and in the Sub-Commission and replies by Governments and organizations of indigenous peoples.

97. The CHAIRMAN said that the debate on agenda item 15 had been concluded.

The meeting rose at 9.10 p.m.